

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	File No. EB-04-SE-045
Perfect Fit Industries, Inc.)	NAL/Acct. No. 200532100008
)	FRN # 0012658035

ORDER

Adopted: February 8, 2005**Released: February 10, 2005**

By the Chief, Enforcement Bureau:

1. In this Order, we adopt the attached Consent Decree entered into between the Enforcement Bureau and Perfect Fit Industries, Inc. ("PFI"). The Consent Decree terminates an investigation initiated by the Enforcement Bureau into whether heated mattress pads and blankets and associated external switching power supplies imported and marketed in the United States by PFI comply with the requirements of Section 302(b) of the Communications Act of 1934, as amended, ("Act")¹ and Parts 2 and 15 of the Commission's Rules ("Rules").²

2. The Enforcement Bureau and PFI have negotiated the terms of a Consent Decree that would resolve this matter and terminate the investigation. A copy of the Consent Decree is attached hereto and incorporated by reference.

3. Based on the record before us, we conclude that no substantial or material questions of fact exist with respect to this matter as to whether PFI possesses the basic qualifications, including those related to character, to hold or obtain any FCC license or authorization.

4. After reviewing the terms of the Consent Decree, we find that the public interest will be served by adopting the Consent Decree and terminating the investigation.

5. Accordingly, **IT IS ORDERED** that, pursuant to Section 4(i) of the Act,³ and Sections 0.111 and 0.311 of the Rules,⁴ the Consent Decree attached to this Order **IS ADOPTED**.

6. **IT IS FURTHER ORDERED** that the Enforcement Bureau's investigation **IS TERMINATED**.

7. **IT IS FURTHER ORDERED** that Perfect Fit Industries, Inc. shall make its voluntary contribution to the United States Treasury, as specified in the Consent Decree, by credit card through the Commission's Debt and Credit Management Center at (202) 418-1995, or by mailing a check or similar instrument, payable to the order of the Federal Communications Commission, to the Federal Communications Commission, Forfeiture Collection Section, Finance Branch, P.O. Box 73482, Chicago, Illinois 60673-7482. Payment by overnight mail may be sent to Bank One/LB 73482, 525 West Monroe,

¹ 47 U.S.C. § 302a(b).

² 47 C.F.R. § 2.1 *et seq.* and § 15.1 *et seq.*

³ 47 U.S.C. § 154(i).

⁴ 47 C.F.R. §§ 0.111, 0.311.

8th Floor Mailroom, Chicago, IL 60661. Payment by wire transfer may be made to ABA Number 071000013, receiving bank Bank One, and account number 1165259. The payment should reference the NAL/Acct. No. and FRN number referenced above.

8. **IT IS FURTHER ORDERED** that a copy of this Order and Consent Decree shall be sent by first class mail and certified mail, return receipt requested, to Louis R. Morris, President, Perfect Fit Industries, Inc., 8501 Tower Point Drive, Charlotte, North Carolina 28227, and to Jack Richards, Esq., Keller and Heckman LLP, 1001 G Street, N.W., Suite 500 West, Washington, D.C. 20001.

FEDERAL COMMUNICATIONS COMMISSION

David H. Solomon
Chief, Enforcement Bureau

CONSENT DECREE

The Enforcement Bureau (“Bureau”) of the Federal Communications Commission (“Commission”) and Perfect Fit Industries, Inc. (“PFI”) hereby enter into this Consent Decree for the purpose of terminating the Bureau’s investigation into whether heated mattress pads and blankets and associated external switching power supplies imported and marketed in the United States by PFI comply with the requirements of Section 302(b) of the Communications Act of 1934, as amended, (“Act”)⁵ and Parts 2 and 15 of the Commission’s Rules (“Rules”).⁶

Background

1. Under Parts 2 and 15 of the Rules, Class B digital devices and Class B external switching power supplies must be authorized in accordance with the Commission’s equipment verification procedure and comply with all applicable technical standards and labeling requirements prior to importation or marketing in the United States. On March 5, 2004, in response to complaints alleging interference related to heated mattress pads marketed by PFI, the Bureau initiated an investigation by issuing a Letter of Inquiry (“LOI”) directing PFI to provide certain information concerning the compliance of its heated mattress pads with Parts 2 and 15 of the Rules. On April 15, 2004, PFI responded to the Bureau’s LOI concerning its heated mattress pads and associated external switching power supplies and also voluntarily disclosed information concerning its heated blankets and associated external switching power supplies. On October 18, 2004, the Spectrum Enforcement Division of the Bureau issued an Order denying PFI’s request for confidential treatment of material submitted in response to the LOI.⁷ On October 25, 2004, PFI filed an application for review of the Order denying its request for confidential treatment, and on November 15, 2004, PFI filed a supplement to its application for review.

Definitions

2. For the purposes of this Consent Decree, the following definitions shall apply:
- (a) “Commission” and “FCC” mean the Federal Communications Commission.
 - (b) “Bureau” means the Enforcement Bureau of the Federal Communications Commission.
 - (c) “PFI” means Perfect Fit Industries, Inc., its subsidiaries, affiliates and any successors or assigns.
 - (d) “Parties” means PFI and the Bureau.
 - (e) “Adopting Order” means an order of the Bureau adopting the terms and conditions of this Consent Decree.
 - (f) “Effective Date” means the date on which the Bureau releases the Adopting Order.
 - (g) “Investigation” means the investigation commenced by the Bureau’s March 5, 2004 Letter of Inquiry to PFI.
 - (h) “Confidentiality Ruling” means the Order issued by the Spectrum Enforcement Division of the Bureau on October 18, 2004 denying PFI’s request for confidential treatment of material submitted in response to the Bureau’s March 4, 2004 Letter of Inquiry.
 - (i) “Application for Review” means the Application for Review of the Confidentiality Ruling filed by PFI on October 25, 2004, and the supplement to the Application for Review filed by PFI on November 15, 2004.

⁵ 47 U.S.C. § 302a(b).

⁶ 47 C.F.R. § 2.1 *et seq.* and § 15.1 *et seq.*

⁷ *Perfect Fit Industries, Inc.*, 19 FCC Rcd 19889 (Enf. Bur., Spectrum Enf. Div., 2004).

- (j) “Rules” means the Commission’s Rules found in Title 47 of the Code of Federal Regulations.
- (k) “Act” means the Communications Act of 1934, as amended, 47 U.S.C. §§151 *et seq.*

Terms of Agreement

3. The Parties agree that the provisions of this Consent Decree shall be subject to final approval by the Bureau by incorporation of such provisions by reference in the Adopting Order.
4. The Parties agree that this Consent Decree does not constitute either an adjudication on the merits or a factual or legal finding or determination regarding any compliance or noncompliance with the requirements of the Act or the Commission’s Rules and orders. The Parties further agree that this Consent Decree is for settlement purposes only and that by agreeing to this Consent Decree, PFI does not admit or deny liability for violating any statute, regulation, or administrative rule in connection with matters that are the subject of this Consent Decree.
5. The Parties agree that this Consent Decree shall become binding on the Parties on the Effective Date. Upon release, the Adopting Order and this Consent Decree shall have the same force and effect as any other final order of the Commission and any violation of the terms or conditions of this Consent Decree shall constitute a violation of a Commission order.
6. The Parties acknowledge and agree that this Consent Decree shall constitute a final and binding settlement between PFI and the Bureau regarding possible violations of the Act and the Rules with respect to any heated mattress pads and heated blankets and associated external switching power supplies marketed by PFI prior to the Effective Date of this Consent Decree.
7. In express reliance on the covenants and representations in this Consent Decree and to avoid further expenditure of scarce public resources, the Bureau agrees to terminate its Investigation into whether PFI may have violated the Act or the Rules with respect to any heated mattress pads and heated blankets and associated external switching power supplies marketed by PFI prior to the Effective Date of this Consent Decree.
8. In consideration for termination by the Bureau of the Investigation and in accordance with the terms of this Consent Decree, PFI agrees to the terms set forth herein.
9. PFI acknowledges that the Bureau has jurisdiction over the matters contained in this Consent Decree and the authority to enter into and adopt this Consent Decree.
10. PFI will implement a Federal Communications Commission Regulatory Compliance Plan (“RCP”) related to PFI’s future compliance with the Act, the Commission’s Rules, and the Commission’s orders. The RCP will include, at a minimum, the following components:
 - (a) **FCC Compliance Procedures.** PFI shall develop and update as necessary appropriate FCC Compliance Procedures. Relevant PFI personnel shall be made aware of the FCC Compliance Procedures and are to follow them. The FCC Compliance Procedures will, among other things, address the equipment authorization requirements of the Act and the Commission’s Rules applicable to all Class B digital devices and Class B external switching power supplies manufactured, imported, marketed and sold by PFI in the United States, as well as the Commission’s Rules regarding labeling and user manual statements for such devices.

(b) **Compliance Officer.** PFI shall designate a Regulatory Compliance Officer (“Compliance Officer”) who will administer the RCP, supervise PFI’s compliance with the Act, the Commission’s Rules and the Consent Decree, and serve as the PFI point of contact for all Commission-related compliance matters. The Compliance Officer will be assigned responsibility within PFI for determining whether the manufacture, importation, marketing, sale, labeling and user manual requirements for such devices are in compliance with FCC Compliance Procedures.

(c) **Review and Monitoring.** PFI will review the RCP annually to ensure that it is maintained in a proper manner and continues to address the objectives set forth therein.

11. PFI agrees that every heated mattress pad and heated blanket and associated external switching power supply which is imported or marketed by PFI in the United States on or after the Effective Date of this Consent Decree shall be compliant with Parts 2 and 15 of the Rules before importation and marketing by PFI.

12. PFI agrees that it will continue to include an 800 number on its literature and on its heated mattress pads and heated blankets and to replace free of charge any non-compliant heated mattress pad or heated blanket with a compliant product upon receipt of a complaint of interference.

13. The Bureau agrees that it will not entertain or institute, or use the facts developed in this Investigation or the existence of this Consent Decree to institute, on its own motion, any new proceeding, formal or informal, nor take any action on its own motion, or recommend to the full Commission any forfeiture or other sanction, against PFI for any alleged violation of the Act or the Rules with respect to any heated mattress pads and heated blankets and associated external switching power supplies marketed by PFI prior to the Effective Date of this Consent Decree.

14. PFI agrees that it will file a motion to withdraw its Application for Review of the Confidentiality Ruling within five (5) days after the Effective Date of this Consent Decree. The Bureau agrees that within fifteen days (15) after the Effective Date of this Consent Decree, it will issue an Order vacating the Confidentiality Ruling and granting PFI’s motion to withdraw the Application for Review.

15. The Parties agree that each is required to comply with each individual condition of this Consent Decree. Each specific condition is a separate condition of the Consent Decree as approved. To the extent that PFI fails to satisfy any condition, in the absence of Commission alteration of the condition, it will be deemed noncompliant and may be subject to possible future enforcement action with respect to such failure to satisfy the condition.

16. The Parties agree that PFI’s obligations set forth in paragraphs 10 through 12 of this Consent Decree shall remain in effect for thirty-six (36) months from the Effective Date.

17. PFI agrees that it will make a voluntary contribution to the United States Treasury in the amount of Seven Thousand Dollars (\$7,000) within 30 calendar days after the Effective Date. Such contribution shall be made, without further protest or recourse, by credit card through the Commission’s Debt and Credit Management Center at (202) 418-1995, or by mailing a check or similar instrument, payable to the order of the Federal Communications Commission, to the Federal Communications Commission, Forfeiture Collection Section, Finance Branch, P.O. Box 73482, Chicago, Illinois 60673-7482. Payment by overnight mail may be sent to Bank One/LB 73482, 525 West Monroe, 8th Floor Mailroom, Chicago, IL 60661. Payment by wire transfer may be made to ABA Number 071000013, receiving bank Bank One, and account number 1165259. The payment should reference NAL/Acct. No. 200532100008 and FRN # 0012658035.

18. PFI's decision to enter into this Consent Decree is expressly contingent upon the Bureau's issuance of an Adopting Order that is consistent with this Consent Decree, and which adopts the Consent Decree without change, addition, modification, or deletion.

19. The Parties waive any and all rights they may have to seek administrative or judicial reconsideration, review, appeal or stay, or to otherwise challenge or contest the validity of this Consent Decree and the Adopting Order, provided that the Adopting Order adopts the Consent Decree without change, addition, modification, or deletion.

20. In the event that this Consent Decree is rendered invalid by any court of competent jurisdiction, this Consent Decree shall become null and void and may not be used in any manner in any legal proceeding.

21. If either Party (or the United States on behalf of the Commission) brings a judicial action to enforce the terms of the Adopting Order, neither PFI nor the Commission shall contest the continuing validity of this Consent Decree or the Adopting Order. The Parties agree to comply with, defend and support the validity of this Consent Decree and the Adopting Order in any proceeding seeking to nullify, void, or otherwise modify the Consent Decree or the Adopting Order.

22. The Parties agree that any provision of this Consent Decree which conflicts with any subsequent rule, order of general applicability or other decision of general applicability adopted by the Commission will be superseded by such Commission rule, order or other decision.

23. PFI waives any rights it may have under any provision of the Equal Access to Justice Act, 5 U.S.C. § 504 and 47 C.F.R. § 1.1501 *et seq.*, relating to the matters addressed in this Consent Decree.

24. This Consent Decree cannot be modified without the advance written consent of both Parties.

25. This Consent Decree may be signed in counterparts.

For the Enforcement Bureau:

David H. Solomon
Chief, Enforcement Bureau

Date

For Perfect Fit Industries, Inc.:

Louis R. Morris
President and Chief Executive Officer

Date